

Nancy M. Erfle, OSB No. 902570
nerfle@grsm.com
W. Gregory Lockwood, OSB No. 114415
wglockwood@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
1300 SW Fifth Avenue, Suite 2000
Portland, OR 97201
Telephone: (503) 382-3852
Facsimile: (503) 616-3600

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

VICTORIA BORDELON,

Plaintiff,

vs.

AIRGAS USA, LLC; and FRANK DOHERTY, an
individual,

Defendants.

Case No: 3:20-cv-02037

NOTICE OF REMOVAL

Defendants Airgas USA, LLC (“Airgas”) and Frank Doherty (“Doherty”) (collectively “Defendants”), by and through their attorneys, hereby remove this action, which is currently pending in the Circuit Court of the state of Oregon, for the County of Multnomah, Case No. 20CV36897, to the United States District Court for the District of Oregon, Portland Division. In support of this Notice of Removal, Defendants state:

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REMOVAL STANDARD

1. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant to the district court of the United States for the district and division embracing the place where such action is pending.”

2. Under 28 U.S.C. § 1332(a)(1), federal courts have original diversity jurisdiction over any civil action “where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States[.]”

3. “[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” 28 U.S.C. § 1332(c)(1).

THE REMOVED CASE

4. The removed case is a negligence action filed by Plaintiff Victoria Bordelon related to an alleged collision between Plaintiff and a semi-truck owned by Airgas and driven by Doherty. *See* Plaintiff’s Complaint (“Compl.”) at ¶¶ 7–10.

PAPERS FROM REMOVED ACTION

5. Pursuant to 28 U.S.C. § 1446(a), Defendants attach to this Notice of Removal a copy of all process, pleadings, and other papers or exhibits of every kind, on file in the state court. *See* **Exhibit 1**, attached hereto.

THE REMOVAL IS TIMELY

6. Plaintiff filed this action in the aforementioned state court on October 19, 2020. Defendants were served with Plaintiff’s Complaint on October 23, 2020. Under 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant . . . of a copy of the initial pleading setting forth the claim for relief

upon which such action or proceeding is based” Accordingly this Notice of Removal, filed on November 16, 2020 (which is less than 30 days after service), is timely filed.

VENUE IS PROPER

7. The United States District Court for the District of Oregon, Portland Division is the proper venue for removal under 28 U.S.C. § 1441(a). The Multnomah County Circuit Court, Multnomah County, Oregon is located within the Portland Division, pursuant to 28 U.S.C. § 117. Therefore, the District of Oregon, Portland Division, is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

DIVERSITY OF CITIZENSHIP EXISTS BETWEEN THE PARTIES

8. This is a civil action that falls under the Court’s original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship) and is one that may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446.

9. At all times material hereto, Plaintiff alleges she is a resident of the State of Oregon. *See* Compl. at ¶ 2. Upon information and belief, Plaintiff is and was, at the time of commencement of this action, a citizen of Oregon.

10. Doherty is a resident of the State of Washington.

11. Airgas is a Delaware Limited Liability Company with its principal place of business in the Commonwealth of Pennsylvania. Therefore, Airgas is a citizen of both Delaware and Pennsylvania for purposes of determining diversity jurisdiction.

12. Airgas USA, LLC is a wholly owned subsidiary of Airgas, Inc. Airgas, Inc. is not a publicly held entity. Airgas, Inc. is a wholly owned indirect subsidiary of L’Air Liquide S.A., which is a public company whose shares are listed on the Paris Euronext stock exchange. Airgas USA, LLC and Airgas, Inc. have no other parent corporations that are publicly traded. Based on the foregoing, the citizenship of its members does not impact its citizenship.

13. Because Plaintiff is a citizen of Oregon, and the Defendants are not, complete diversity exists under 28 U.S.C. § 1332.

THE AMOUNT OF IN CONTROVERSY REQUIREMENT IS SATISFIED

14. The amount in controversy exceeds \$75,000, exclusive of costs and interest. Plaintiff seeks monetary relief of \$750,000.00. *See* Compl. at ¶¶ 13 and 14.

15. Thus, the state court action may be removed to this Court by Defendants in accordance with the provisions of 28 U.S.C. § 1441(a) because (i) this action is a civil action pending within the jurisdiction of the United States District Court for the District of Oregon; (ii) this action is between citizens of different states; and, (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

FILING OF REMOVAL PAPERS

16. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a copy of this Notice of Removal with the Multnomah County Circuit Court, Multnomah County, Oregon, and will serve a copy of the same upon counsel for Plaintiff. By filing this Notice of Removal, Defendants do not waive any jurisdictional or other defenses that might be available to them. In addition, Defendants expressly reserve the right to move for dismissal of some or all of Plaintiff's claims pursuant to Rule 12 of the Federal Rules of Civil Procedure. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Defendants hereby remove this action from the Multnomah County Circuit Court, Multnomah County, Oregon, to the United States District Court for the District of Oregon, Portland Division and request that this Court retain jurisdiction for all further proceedings in this

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matter. Should any question arise as to the removal of this matter, Defendants respectfully request an opportunity to conduct appropriate discovery and/or to provide briefing and oral argument as to why removal is proper.

Dated: November 23, 2020

GORDON REES SCULLY MANSUKHANI, LLP

By: s/ Nancy M. Erfle

Nancy M. Erfle, OSB No. 902570

nerfle@grsm.com

W. Gregory Lockwood, OSB No. 114415

wglockwood@grsm.com

Attorneys for Defendants